

REMARKS

Claims 1-25 are currently pending in the application. New claims 26-32 have been added. Upon entry of these new claims, claims 1-32 will be pending. No new matter has been added.

Inoue

Claims 1-3, 17 and 25 have been rejected as anticipated by EP 1.210.880 (Inoue et al.) under 102(b). Applicants respectfully disagree.

Inoue fails to disclose at least several aspects of the claimed invention. First, Inoue fails to teach or suggest the use of ethanol. Second, Inoue fails to teach or suggest any of the recited components in the claimed ranges, let alone the claimed combination of ranges. Moreover, not only does Inoue fail to provide any guidance as to the amounts of the claimed components, but Inoue also fails to teach or suggest the claimed 3X composition having less than 32 °Brix or the claimed 1X composition having less than 11 °Brix.

In addition, Inoue fails to teach or suggest the water-based creamer of claim 25. Inoue merely mentions that sucralose, a high-potency sweetener, can be used to sweeten anything under the sun. However, the office action fails to identify anywhere in Inoue that describes or suggests the claimed combination of components (emulsifier, stabilizer, sweetener and fat), let alone in the ranges recited.

Zablocki

Claims 1-24 have been rejected as anticipated by Zablocki et al. us 6,139,895 under 102(b). Applicants respectfully disagree.

Zablocki is not directed to frozen beverages. The specification states: "The acidic edible liquid composition may also be frozen, e.g. a frozen fruit juice composition." Col. 2, ll. 21-23. This description, however, refers to freezing the juice into a solid block, not the preparation of a slushed beverage. This is apparent, for example, in the description in Example 15: "The resulting concentrate may be frozen for storage." Col. 11, ll. 52-53.

Broz

Claims 1-24 have been rejected as anticipated by Broz 2002/0197376 under 102(e). Applicants respectfully disagree.

Broz fails to teach or suggest the use of ethanol. Claim 1, as currently amended, recites high-potency sweetener, flavoring, sugar substitute and ethanol. Such a combination is not taught or suggested by Broz.

In addition, Broz is limited to carbonated beverages. It is well known in the art that carbonation in beverages depresses the freezing point of the beverage. Thus, because Broz is limited to carbonated beverages, it fails to teach or suggest how its formulations could be modified, if at all, to produce a frozen non-carbonated beverage.

Lee

Claims 1-24 have been rejected as anticipated by Lee et al. 2002/0197371 under 102(e). Applicants respectfully disagree. Lee fails to teach or suggest the use of ethanol. In addition, Lee is limited to carbonated beverages.

Dubois

Claims 1-24 have been rejected as anticipated by Dubois et al. WO 01/085130 under 102(a). Applicants respectfully disagree.

Dubois fails to teach or suggest the use of ethanol. In addition, because Dubois's examples are limited to carbonated beverages, Dubois fails to teach or suggest how its formulations could be modified, if at all, to produce a frozen non-carbonated beverage. Furthermore, Dubois fails to teach or suggest the use of a texture modifier, let alone in the recited amounts.

In addition to the foregoing reasons, none of the foregoing references teaches or suggests an aseptic concentrate according to the claimed invention.

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CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests allowance of the pending claims. The Examiner is invited to contact the undersigned attorney to discuss any matter concerning this application. The Commissioner is hereby authorized to charge any fees which may be necessary for consideration of this paper to Kenyon & Kenyon Deposit Account No. 11-0600.

Respectfully submitted,

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